

## **REMARKS**

Claims 72 – 98 are pending in this application . Claims 78, 81, 90-91 and 97-98 have been amended slightly to clarify Applicants’ invention. The amendments to these claims do not narrow the scope of the application claims nor do the amendments add new matter to the application.

The specification has been amended to identify Figures 18A, 18B, and 18C in the drawing description section. No new matter has been added to the application by way of these amendments to the application claims and specification.

The specification and claims amendments and the format of this Reply are in accordance with the Notice, titled “Amendments in a Revised Format Now Permitted” and issued by the USPTO on January 31, 2003.

### **I. THE DRAWING OBJECTION**

The Examiner objected to the drawings because Figures 18A – 18C are not referenced in the “Brief Description of Drawings” section of the specification.

The Applicant’s have overcome the Examiner’s objection by including reference to Figures 18A – 18C in the specification. No new matter has been added to the specification by this amendment.

### **II. TRAVERSE OF THE OBVIOUSNESS REJECTIONS**

The Examiner rejected all pending application for being obvious. Specifically, the Examiner rejected claims 72-87 and 90-91 under 35 USC 103(a) as being unpatentable over Heidt et al. (USP 5,250,262) in view of Sakurada (USP 4,346,056). The Examiner also rejected claims

88-89 and 92-98 under 35 USC 103(a) as being unpatentable over Heidt et al. (USP 5,250,262) in view of Sakurada (USP 4,346,056) and further in view of Rokugawa (USP 4,844,868)

In rejecting all pending application claims for obviousness, the Examiner relied on Heidt et al., for:

... teach[ing] automatically determining whether the serum in the pipettor 16 should be dispensed onto the slide by reading, via BCR 158, the information contained on barcode 86 of the slide . . . Additionally Heidt et al. teaches determining the position of a slide relative to a home position.

As will be shown below, Heidt et al. does not teach either of these aspects of the claimed invention. Thus, the Examiner should withdraw the rejection of all claims because the Examiner has not established a *prima facie* case of obviousness.

**A. Heidt et al. Does Not Disclose A System That Determines Whether Or Not Serum Should Be Applied To A Slide By Reading A Barcode Associated With The Slide**

It is important to understand the purpose and operation of the Heidt et al. apparatus. The Heidt et al. apparatus is designed to perform multiple analytical tests using slides. There are several limitations to the Heidt et al. apparatus, however, that cause the apparatus to operate very differently from the claimed apparatus. Importantly, the results of the tests performed using the Heidt et al. apparatus must be capable of being evaluated by reflectometry. (Col. 28, line 13 to Col. 30, line 48). Moreover, the chemicals that interact with the sample being tested – the analyte – is preapplied to the slides before the slides are placed in the apparatus. (Col. 7, lines 28 – 31). Most importantly, the analyte on the slides is dry - the slides that are inserted into the apparatus include the dried analyte. *Id.* The only liquid that is added to a slide is a single application, by pipette, of a very small amount of the serum that is being analyzed. (Col. 7, lines 33 – 36 & Col. 17, lines 10 – 14). Thus, the Heidt et al. apparatus does not apply multiple liquids to the slide during analysis. Instead, a single liquid -

the serum undergoing analysis - is applied once to each slide so that it contacts the dry analyte on the slide.

Each slide includes a bar code as the Examiner noted. However, the purpose of the bar code is not, as the Examiner states - to determine whether or not serum should be applied to a slide - because serum is always applied to a slide. Otherwise, there would be no test results to measure by reflectometry. Instead, the bar code associated with a slide in the Heidt et al. apparatus has a different purpose:

The bar code 86 includes information concerning what type of analyte is contained on the test slide. The bar code 86 is read by the chemical analyzer, which uses this information in analyzing the test results. (Col. 9, lines 51 – 54).

Thus, the slide bar code corresponds to the type of dry analyte on the slide. Slides with the same dry analyte will have the same bar code. The slide bar code is used to instruct the analyzer which reflectometer light frequency to use to analyze the results of the combination of the dry analyte with the serum sample (the “test result”). This purpose of the slide bar code is fully supported by the ‘262 patent excerpt cited by the Examiner:

Various tests require various test slides, each test slide carrying a different dry analyte. The various test slides must be exposed to light of selected frequencies in order to conduct a reflectometry test. The type of test slide, for example, for a calcium test, is provided by the bar code information 86 on the top surface of the slide, which information is read by the bar code optical scanner 158 and which is provided to the associated computer and circuitry of the analyzer. In its memory, the analyzer will associate a particular receiving slot 52 with a particular test slide 71 and will energize the appropriate light source 422-426 during the analysis operation when the slide is positioned over the particular light source.

(Col. 30, lines 33 – 47).

With this understanding of the teachings of the Heidt et al. reference in mind, it becomes apparent that the Examiner has not made out a *prima facie* case of obviousness with respect to the claimed invention because Heidt et al. does not disclose – as stated by the Examiner – the steps of:

- ◊ automatically identifying the reagent container using a computer based on information associated with the reagent container;
- ◊ automatically determining whether reagent in the reagent container should be dispensed onto the slide; and
- ◊ dispensing the reagent in the reagent container onto the slide based on the determination of whether the reagent in the reagent container should be dispensed onto the slide

For at least this reason, the Applicants respectfully request that the Examiner withdraw the obviousness rejection of all pending claims.

#### **B. Heidt et al. Does Not Determine The Position Of A Slide**

A second and independent grounds for patentability of all of the pending application claims is because Heidt et al. does not determine the position of a slide as is required by claims 74, 77-78, and 82-83. Instead, as is evident from the patent excerpt cited by the Examiner and reproduced in section II (A) above, Heidt et al. merely discloses “associat[ing] a particular receiving slot 52 with a particular test slide 71 and will energize the appropriate light source 422-426 during the analysis operation when the slide is positioned over the particular light source.” (Col 30, lines 33 - 47).

Thus, the Heidt et al. apparatus does identify the type of slide located in a particular receiving slot 52. But Heidt et al. does not disclose or suggest that the position of slide is based, in any way, upon the position of slide relative to another position. Once again Heidt et al. does not supply the teaching relied upon by the Examiner is rejecting all application claims for obviousness. Thus, there is no *prima facie* case of obviousness of claims 74, 77-78, and 82-83, and the Applicants respectfully request that the Examiner withdraw the obviousness rejection of all pending claims.

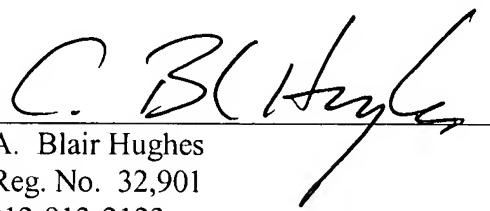
## CONCLUSION

The Applicants have shown, above, that there is no *prima facie* case of obviousness of the pending application claims based upon the combinations of the prior art cited by the Examiner. Therefore, favorable reconsideration and allowance of all pending application claims 72 – 98 is courteously solicited.

Respectfully submitted,

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